

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

2006 SEP 20 P 2:48

GREGORY M. DONNELLY,)
Petitioner,)
)
V.)
)
BERNARD BRADY,)
Respondent.)

CIVIL ACTION
No. 04-12706-RWZ

U.S. DISTRICT COURT
DISTRICT OF MASS

NOTICE OF APPEAL
AND
REQUEST FOR A CERTIFICATE OF APPEALABILITY

Gregory M. Donnelly, the petitioner, acting pro se, hereby gives notice of appeal from the judgment and order of this Court (Zobel, J.) dismissing his petition for a writ of habeas corpus, pursuant to Federal Rules of Civil Procedure 12(b), as time barred by the applicable statute of limitations, on August 22, 2006; and further requests that a certificate of appealability issue, pursuant to 28 U.S.C. § 2253, where reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were "'adequate to deserve encouragement to proceed further.'" Barefoot v. Estelle, 463 U.S. 880 (1983); and Slack v. McDaniels, 529 U.S. 473, 483-84 (2000).

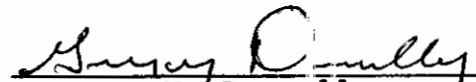
In support hereof, movant states that his rights to due process of law were violated by the respondent under the holding of Santobello v. New York, 404 U.S. 257, 261-62 (1971); and Ricketts v. Adamson, 483 U.S. 1, 6 n.3 (1987); and the district court's holding in this case is contrary to as well as

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an unreasonable application of 28 U.S.C. § 2244(d)(1)(A), as interpreted by Frasch v. Peguese, 414 F.3d 518, 522 (4th Cir. 2005); Buckley v. Terhune, 441 F.3d 688 (9th Cir. 2006), cert. filed, Tilton v. Buckley, Supreme Court No. 05-1623 (6/15/06); and, Rodriguez v. Spencer, 412 F.3d 29, 33 (1st Cir. 2005), citing Carey v. Saffold, 536 U.S. 214, 223 (2004).

Dated: SEPT 15, 2006

Respectfully submitted,


Gregory M. Donnelly, pro se
Petitioner-Appellant
Billerica House of Correction
269 Treble Cove Road
Billerica, MA 01862

CERTIFICATE OF SERVICE

I hereby certify that on the below date I served a true copy of the above pleading on the respondent's attorney by mailing same to his usual place of business by first class United States mail, postage pre-paid.

Dated: SEPT 15, 2006 
Gregory M. Donnelly